

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Telephone Number Portability)	CC Docket No. 95-116
)	
CTIA Petitions for Declaratory Ruling on)	FCC 03-284
Wireline-Wireless Porting Issues)	
)	
)	

**REPLY COMMENTS
of the
ORGANIZATION FOR THE PROMOTION AND
ADVANCEMENT OF SMALL TELECOMMUNICATIONS COMPANIES**

I. Introduction

The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) hereby submits these reply comments in response to the Federal Communications Commission's (FCC, Commission) proceeding seeking comment on measures it could take to facilitate wireless-to-wireline local number portability (LNP).¹ OPASTCO is a national trade association representing more than 550 small incumbent local exchange carriers (ILECs) serving rural areas of the United States. Its members, which include both commercial companies and cooperatives, together serve over 3.5 million customers. All OPASTCO members are rural telephone companies as defined in 47 U.S.C. §153(37). Nearly one half of OPASTCO's members provide some type of wireless service. OPASTCO holds a seat on the North American

¹ *In the Matter of Telephone Number Portability, CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues*, CC Docket No. 95-116, Memorandum Opinion and Order and Further Notice of

Numbering Council (NANC) and actively participates in that body's deliberations.

OPASTCO agrees with those commenters that have indicated that the Commission failed to conduct proper Regulatory Flexibility Analyses, and should stay its intermodal LNP requirements until it has done so. Further, OPASTCO concurs with parties that noted the Commission has failed to indicate how carriers that individually serve fewer than two percent of the nation's access lines (2 Percent Carriers) are expected to overcome obstacles to implementing intermodal LNP, specifically involving the rating and routing of calls in the absence of interconnection agreements. Finally, the Commission must refrain from shortening the porting interval for 2 Percent Carriers due to the undue burdens that such a requirement would have on them.

II. THERE ARE FUNDAMENTAL FLAWS IN THE COMMISSION'S REGULATORY FLEXIBILITY ANALYSES

The National Telecommunications Cooperative Association (NTCA) correctly pointed out that the Commission's Initial Regulatory Flexibility Analysis (IRFA) is inherently flawed.² Specifically, the IRFA fails to describe "any significant alternatives that it has considered in reaching its proposed approach" as required by the Regulatory Flexibility Act.³ In fact, the IRFA lists no alternatives at all. Instead, it asks commenters to supply solutions to the problems that the Commission recognized, but declined to address, in the Order.⁴ The Commission is required to consider alternatives and carefully examine the impacts on small carriers before, not after, it imposes new requirements on them. However, the IRFA fails to do so. It also impermissibly shifts this duty from the

Proposed Rulemaking, FCC 03-284 (rel. Nov. 10, 2003) (Order & Further Notice).

² NTCA, pp. 3-4.

³ Order & Further Notice, Appendix B - IRFA, para. 9.

⁴ Order & Further Notice, para. 40.

Commission to industry. Finally, the IRFA does not examine any specific proposals, but merely notes that vague “future rules” could impose burdens on small carriers.⁵

There is also a fundamental inconsistency in the Commission’s approach to its regulatory flexibility obligations. However flawed, the mere presence of the IRFA in the Further Notice demonstrates the Commission’s admission that wireless-to-wireline LNP entails new obligations that may result in disproportionate burdens on small carriers that merit examination under the provisions of the Regulatory Flexibility Act. It is important to note that some of the operational challenges associated with wireless-to-wireline LNP are identical to the problems 2 Percent Carriers face in implementing wireline-to-wireless LNP. Specifically, these issues involve the rating and routing of calls in the absence of interconnection agreements, which are discussed in great detail in Section III.

As the Commission has tacitly acknowledged that potential wireless-to-wireline requirements merit an IRFA, it cannot logically deny that the wireline-to-wireless requirements found in the Order do not also merit the same treatment. Yet the new wireline-to-wireless requirements never benefited even from a flawed IRFA, much less a Final Regulatory Flexibility Analysis. Therefore, the Commission should stay the effects of the Order & Further Notice for 2 Percent Carriers until such time as it has adequately accounted for the operational realities of small carriers and conducted proper Regulatory Flexibility Analyses – for both wireless-to-wireline and wireline-to-wireless LNP – as required.

III. RATE CENTER CONCERNS FOR 2 PERCENT CARRIERS MUST BE ADDRESSED

⁵ IRFA, para. 8.

The Commission seeks comment on how to facilitate wireless-to-wireline porting where there is a mismatch between the rate center associated with the wireless number and the rate center in which the wireline carrier seeks to serve the customer.⁶ The Commission has explicitly recognized that these rating and routing issues are pending in other proceedings,⁷ yet it still wants small ILECs to implement intermodal LNP prior to their resolution without any indication of how this should be accomplished. As the South Dakota Telecommunications Association *et. al.* explained:

The Commission does not describe how it proposes to achieve the implementation of wireless to wireline porting.... The fundamental, egregious problem remains for wireless-to-wireline porting as was created by the Commission for wireline-to-wireless porting: The Commission fails to address how calls will be transported outside of the rate center, and how the carriers will be compensated for these arrangements.⁸

Indeed, as the United States Telecommunications Association (USTA) observed, “the FCC has put the proverbial cart before the horse.”⁹

In the Order & Further Notice, the Commission uses only the operating environments of large regional carriers to illustrate its claim that LNP is technically feasible regardless of rate center concerns.¹⁰ It is imperative for the Commission to recognize that rural LECs are limited to transporting traffic within their exchange boundaries and to points of interconnection at their boundaries. Unlike the regional Bell operating companies that transport traffic throughout a Local Access Transport Area

⁶ *Ibid.*, para. 42.

⁷ *Id.*, paras. 39-40.

⁸ South Dakota Telecommunications Association, Townes Telecommunications, Inc., and Dickey Rural Telephone Cooperative (South Dakota LECs), p. 2. *See also* National Telecommunications Cooperative Association (NTCA), pp. 2-3; Texas Statewide Telephone Cooperative Inc. (TSTCI), p. 2

⁹ USTA, p. 4.

¹⁰ Order & Further Notice, para. 23.

(LATA) over their established network facilities, the interconnection obligations and technical capabilities of rural carriers are limited to their local exchange networks, which are geographically limited by the bounds of their incumbent service territory. Without an established interconnection agreement with a wireless carrier, calls made from a rural ILEC to a wireless carrier are generally transported by the caller's toll provider. It is the toll provider that performs the rating of the call.¹¹ Thus, absent an interconnection agreement, these calls will either go uncompleted or toll charges will be assessed for calls that were previously treated as local.

The operational realities of small LECs require that interconnection agreements must first be operable in order for LNP to benefit their customers without undue confusion and inconvenience.¹² This is the case regardless of whether the porting in question is intermodal or intramodal in nature. Therefore, the Commission should stay intermodal porting requirements for 2 Percent Carriers pending a reconsideration of its decision to require such porting in the absence of interconnection agreements.

IV. THE COMMISSION MUST BEAR IN MIND THE UNIQUE CIRCUMSTANCES FACED BY 2 PERCENT CARRIERS AS IT EVALUATES THE CURRENT INTERMODAL PORTING INTERVAL

OPASTCO concurs with the vast majority of commenters¹³ in this proceeding who have indicated that any shortening of the current intermodal porting interval of four days is unnecessary at this time. No credible evidence has been presented that would indicate that the present porting time frame is in some way impeding the functionality of

¹¹ See, Independent Telephone and Telecommunications Alliance, NTCA, and OPASTCO *Emergency Joint Petition for Partial Stay and Clarification*, pp. 12-19.

¹² Oklahoma Rural Telephone Companies, pp. 4-5.

¹³ AT&T, pp. 7-10; BellSouth, pp. 20-24; Qwest, pp. 7-11; SBC, pp. 12-14; South Dakota LECs, pp. 5-8; TSTCI, pp. 2-3; USTA, pp. 5-7; Verizon, pp. 12-17.

wireline-to-wireless LNP. Consequently, as AT&T correctly notes, there is no need for the Commission to “rush to judgement”¹⁴ in altering the existing four-day intermodal porting interval. Furthermore, it is notable that although the Commission specifically requested that the NANC “promptly” provide a recommendation on the porting interval,¹⁵ no NANC recommendation is available as of yet upon which to comment.

The Commission should consider the additional economic burden that would be placed on 2 Percent Carriers when assessing whether an interval shorter than the current four-day guideline is actually justified. Small LECs already face the significant financial impacts associated with LNP implementation, such as the hardware and software upgrades to their switching platforms and establishing the database connections necessary to support LNP queries.¹⁶

Moreover, in order to support any future FCC mandated shorter porting interval, mechanized systems and automated interfaces with other carriers’ systems would be an absolute necessity. Of the few rural carriers that have already become LNP-capable, most do not currently possess “customized, automated LNP support systems, due to the small amount of LNP activity” that they receive.¹⁷

As BellSouth has correctly noted, “[r]equiring carriers with networks of different sizes and comprised of different systems to undergo extensive modifications to shorten the porting interval would be a significant financial commitment.”¹⁸ Certainly, the additional investment in these systems needed to support the relatively few ports a rural

¹⁴ AT&T, p. 10.

¹⁵ Order & Further Notice, para. 51.

¹⁶ TSTCI, pp. 2-3.

¹⁷ South Dakota LECs, p. 6.

¹⁸ BellSouth, p. 24. *See also*, Qwest, pp. 7-8 ; SBC, p. 14; USTA, pp. 6-7; Verizon, pp. 13-14.

carrier could anticipate would not pass any rational cost-benefit test, and could create a severe economic hardship for the rural carrier and the customers they serve.¹⁹ For these reasons, should the Commission mandate an intermodal porting interval shorter than the existing four-day time frame, then it should specifically exempt all 2 Percent Carriers.

V. CONCLUSION

The Commission should stay its intermodal LNP requirements for 2 Percent Carriers until it performs adequate Regulatory Flexibility Analyses as required by law. Due to the operational concerns raised by numerous parties, it should also stay the requirements for 2 Percent Carriers until all rating and routing issues are resolved. Finally, in the event the Commission decides to shorten the current porting interval, it should exempt 2 Percent Carriers in recognition of the disproportionate impact such a requirement would have on small companies.

¹⁹ See, South Dakota LECss, p. 6; TSTCI, p. 3.

Respectfully submitted,

**THE ORGANIZATION FOR THE PROMOTION
AND ADVANCEMENT OF SMALL
TELECOMMUNICATIONS COMPANIES**

By: /s/ Stuart Polikoff
Stuart Polikoff
Director of Government Relations

By: /s/ Stephen Pastorkovich
Stephen Pastorkovich
Business Development Director/
Senior Policy Analyst

By: /s/ John McHugh
John McHugh
Technical Director

By: /s/ Jeffrey W. Smith
Jeffrey W. Smith
Policy Analyst

21 Dupont Circle, NW
Suite 700
Washington, DC 20036
(202) 659-5990

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CERTIFICATE OF SERVICE

I, Jeffrey W. Smith, hereby certify that a copy of the comments by the Organization for the Promotion and Advancement of Small Telecommunications Companies was sent by first class United States mail, postage prepaid, or via electronic mail on this, the 4th day of February, 2004, to those listed on the attached sheet.

By: /s/ Jeffrey W. Smith
Jeffrey W. Smith

SERVICE LIST
CC Docket No. 95-116
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Lawrence J. Lafaro
Stephen C. Garavito
Richard A. Rocchini
AT&T Corp.
One AT&T Way
Room 3A227
Bedminster, NJ 07921

Angela Brown
BellSouth Corp.
675 West Peachtree Street
Atlanta, Georgia 30375-0001

Marie Guillory
Jill Canfield
National Telecommunications
Cooperative Association
4121 Wilson Boulevard, 10th Floor
Arlington, Virginia 22203

Ron Comingdeer
Kendall Parrish
Mary Kunc
Comingdeer, Lee & Gooch
Counsel to the Oklahoma Rural
Telephone Companies
6011 N. Robinson
Oklahoma City, Oklahoma 73118

Andrew D. Crain
Kathryn Marie Krause
Qwest Corp.
607 14th Street, N.W.
Suite 950
Washington, DC 20005

William Brown

Gary Phillips
Paul Mancini
SBC Telecommunications, Inc.
1401 Eye Street, N.W., Suite 1100
Washington, DC 20005

Richard Coit
South Dakota
Telecommunications Association
P.O. Box 57
Pierre, South Dakota 57501

Benjamin Dickens
Mary Sisak
Blooston, Mordkofsky, Dickens, Duffy
& Prendergast
Counsel to South Dakota
Telecommunications Association, *et al*
2120 L Street, NW
Suite 300
Washington, D.C. 20037

Cammie Hughes
Texas Statewide Telephone
Cooperative, Inc.
3721 Executive Center Drive, Suite 200
Austin, Texas 78731

Indra Sehdev Chalk
Michael T. McMenamin
Robin E. Tuttle
United States Telecom Association
1401 H Street, NW, Suite 600
Washington, D.C. 20005

Sherry Ingram
Michael Glover

Karen Zacharia
Verizon Corp.
1515 North Courthouse Road
Suite 550
Arlington, Virginia 22201

Thomas Sullivan
Eric Menge
Office of Advocacy
U.S. Small Business Administration
409 Third Street, SW
Washington, D.C. 20416

Qualex International Portals II
445 12th Street, SW
Room CY-B402
Washington, D.C. 20554